

**Stanly vs Chandran**

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**Court :** Kerala

**Decided On :** Oct-13-2022

**Judge :** Honourable Mr.Justice C.S.Dias

**Appeal No. :** OP(C)/103/2019

**Appellant :** Stanly

**Respondent :** Chandran

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY,  
THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944 OP(C) NO.  
103 OF 2019 AGAINST THE ORDER/JUDGMENTOS 358/2011 OF  
ADDITIONAL SUB COURT, PALAKKAD PETITIONER/ PETITIONER  
NO.1/ DEFENDANT NO.1 STANLY, AGED 71 YEARS S/O. RAPHEL,  
THACHUTHARA HOUSE, \ORAVAKKODE, NENMARA, CHITTUR,  
PALAKKAD DISTRICT-678 002 BY ADVS. P.B.KRISHNAN  
SRI.P.M.NEELAKANDAN SRI.P.B.SUBRAMANYAN SRI.SABU  
GEORGE SMT.B.ANUSREE SRI.MANU VYASAN PETER  
RESPONDENTS/ RESPONDENTS & PETITIONER NO.2/ PLAINTIFF &  
DEFENDANTS 3, 4 &2:

1 CHANDRAN, AGED 66 YEARS, S/O. GOPALAN, ORAVAKKODE, NENMARA,CHITTUR, PALAKKAD DISTRICT-678 002 2 BHASKARAN, AGED 62 YEARS, S/O. KARUPPANEZHUTHASSAN, ORAVAKKODE, NENMARA,CHITTUR, PALAKKAD DISTRICT-678 002 3 SURESHKUMAR, AGED 51 YEARS, S/O. MANICKEN,ORAVAKKODE, NENMARA, CHITTUR, PALAKKAD DISTRICT-678 002 4 JAMES, AGED 61 YEARS, S/O.RAPHEL, THACHUTHARA HOUSE, ORAVAKKODE, NENMARA,CHITTUR, PALAKKAD DISTRICT-678 002 -:2:-

BY ADVS. SRI.SAJAN VARGHEESE K. SRI.P.K.MOHANAN(PALAKKAD) SRI.LIJU. M.P THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 13.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:- Dated this the 13th day of October,2022

## **JUDGMENT**

Aggrieved by the order dated 22.11.2018 in I.A.No.2765/2018 in O.S.No.358/2011(Ext.P9) of the Court of the Subordinate Judge(Additional), Palakkad, the first defendant in the suit has filed the original petition. The respondents in the original petition are the plaintiffs and defendants 3, 4 and 2 before the court below.

2. The petitioner's case, in brief, in the original

petition is: he is the first defendant in the suit, which is filed by the first respondent, for a decree of fixation of boundary and injunction. The petitioner and the fourth respondent have resisted the suit through Ext.P2 joint written statement. The respondents 2 and 3 have also filed Ext.P3 joint written statement. At the instance of

-:4:- the first respondent, an Advocate Commissioner was appointed, who has filed Ext.P4 commission report and plan, demarcating the strip of land given to the petitioner and the fourth respondent by the first respondent. The petitioner and the

fourth respondent have filed Ext.P5 objection to Ext.P4 commission report and Ext.P6 application to set aside the report. The Advocate Commissioner was examined and his deposition is produced as Ext.P8. The court below, without considering the objection of the petitioner and the fourth respondent, has by the impugned Ext.P9 order, dismissed Ext.P6 application. Ext.P9 is irregular and illegal. Hence, the original petition.

3. Heard; Sri. S.V.Balakrishna Iyer, the learned Senior Counsel appearing for the petitioner, Sri.Sajan Vargheese K, the learned counsel appearing for the first respondent and Sri. P.K.Mohanan(Palakkad), the -:5:- learned counsel appearing for the respondents 2 and 3.

4. The point is whether there is any error in Ext.P9 order?.

5. The first respondent has filed Ext.P1 plaint,

inter alia, seeking a decree to fix the northern and western boundary of plaint schedule property, as per his title deeds and the village records. The petitioner and the fourth respondent have filed Ext.P2 joint written statement, inter alia, contending that in the earlier rounds of litigation between the parties, the dispute was settled as per an agreement dated 24.01.1998. The first respondent had filed O.S.No.220/2007 before the Court of the Munsiff, Chittur, for a decree of injunction. That suit was dismissed and the decree was concurrently confirmed by the Appellate Court in A.S.No.298/2009 and this Court in R.S.A.No.1240/2010. All the three Courts -:6:- have found that there was an agreement executed between the parties in respect of the right of way of the petitioners through the first respondents property. Suppressing the above facts the present suit is filed. Hence, the suit may be dismissed.

6. The Advocate Commissioner filed Ext.P4 report and plan, which was not to the liking of the

petitioner and the fourth respondent. Consequently, they filed Exts P5 and P6 applications objecting to the report and to set aside the same. They have contended that the Advocate Commissioner has not identified the property that

was surrendered by the first respondent for widening the pathway as per agreement dated 24.01.1998.

7. The court below, after appreciating Ext.P4 report and plan, Ext.P5 objection, Ext.P6 application to set aside the report and Ext.P7 objection to Ext.P6 -:7:-

### **application, by the impugned Ext.P9 order, has held**

that the matters sought to be ascertained by the petitioner are to be established at the time of trial and not through the report of the Advocate Commissioner.

8. I have re-considered the pleadings and materials on record. It is trite, a commission report is only corroborative in nature. The matters that have been sought to be elucidated through the Advocate

### **Commissioner do not fall within the purview of Order**

26 Rule 9 of the Code of Civil Procedure,1908. Furthermore, it is for the first respondent/plaintiff to prove his case and the petitioner cannot get his alleged right enforced in a suit filed by the first respondent. Thus, I hold that there is no valid ground stated in Ext.P6 application to set aside the commission report and plan. I do not find any error or illegality in Ext.P9

### **order warranting interference by this Court under**

-:8:- Articles 227 of the Constitution of India. The original petition fails and is dismissed. Sd/- C.S.DIAS,JUDGE DST/13.10.22 //True copy/ P.A.To Judge -:9:- APPENDIX PETITIONER EXHIBITS EXHIBIT P1 A TRUE COPY OF THE PLAINT DATED 25.5.2011 IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL. SUB COURT, PALAKKAD EXHIBIT P2 A TRUE COPY OF THE WRITTEN STATEMENT DATED

8.8.2011 FILED BY DEFENDANTS 1 AND 2 IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD EXHIBIT P3 A TRUE COPY OF THE WRITTEN STATEMENT DATED 9.8.2011 FILED BY DEFENDANTS 3 AND 4 IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB

COURT,PALAKKAD

EXHIBIT P4 A TRUE COPY OF THE COMMISSION REPORT AND PLAN DATED 29-8-2018 FILED IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD EXHIBIT P5 A TRUE COPY OF THE OBJECTION DATED 18.9.2018 EXHIBIT P6 A TRUE COPY OF I.A.2765 OF 2018 DATED 18.9.2018 IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD EXHIBIT P7 A TRUE COPY OF THE OBJECTION DATED 8-1-2018 FILED BY THE PLAINTIFF IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD EXHIBIT P8 A TRUE COPY OF THE DEPOSITION DATED

24.10.2018 OF THE ADVOCATE COMMISSIONER IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 22.11.2018 IN I.A.NO.2765 OF 20918 IN O.S.NO.358 OF 2011 ON THE FILE OF THE ADDL.SUB COURT,PALAKKAD RESPONDENTS EXHIBITS: NIL

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